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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/039,202	03/13/1998	DAVID ROBERT WESTON	GIL4-BC72	9300
21611	7590	10/08/2003	EXAMINER	
SNELL & WILMER LLP 1920 MAIN STREET SUITE 1200 IRVINE, CA 92614-7230			SALCE, JASON P	
		ART UNIT		PAPER NUMBER
		2611		
DATE MAILED: 10/08/2003				

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/039,202	WESTON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jason P Salce	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 3 and 5-13 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 3 and 5-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.
 

If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

The request for a continued prosecution application (CPA) under 37 CFR 1.53(d) filed on 7/22/03 is acknowledged. 37 CFR 1.53(d)(1) was amended to provide that the CPA is for a design patent and the prior application of the CPA must be a design application that is complete as defined by 37 CFR 1.51(b). See *Elimination of Continued Prosecution Application Practice as to Utility and Plant Patent Applications*, final rule, 68 FR 32376 (May 30, 2003).

Since a CPA of this application is not permitted under 37 CFR 1.53(d)(1), the improper request for a CPA is being treated as a request for continued examination of this application under 37 CFR 1.114. See *id.* at 14866, 1233 Off. Gaz. Pat. Office at 48.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 3, 7-8, and 10-11 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Rostoker et al. (U.S. Patent No. 6,111,863).

Referring to claim 8, Rostoker discloses allocating a priority to the data to be transmitted in accordance with its category (see Column 4, Lines 30-34 for assigning

priority to categories of data (audio, video or data) to be transmitted), the priorities defining a relationship between the different categories of the data (see Column 4, Lines 35-36 for defining a relationship of a portion of the transmission bandwidth each category of data occupies).

Rostoker also discloses transmitting the data in a manner determined by the allocated priorities (see Column 4, Lines 47-52).

Rostoker also discloses while data is being transmitted (see Column 6, Lines 41-44 for "dynamic allocation" of priorities, therefore the priorities can be changed during transmission), monitoring the data remaining to be transmitted (see Column 6, Lines 44-45) to determine whether the remaining data will be transmitted within a satisfactory predetermined time period (see Column 5, Lines 1-7 for another party requesting to dynamically allocate more priority to the audio data to ensure higher fidelity, therefore, the user changes the prior in order to ensure that the transmission will be transmitted within a satisfactory predetermined time period).

Rostoker also discloses if any of the remaining data will not be transmitted within the predetermined time period (whatever data is left in the buffer at the time of the request (Column 5, Lines 1-7 for requesting high fidelity audio)), changing the priority of the remaining data so that it will be transmitted within the predetermined time period (see Column 6, Lines 52-58 for transmitted the data according to the new priorities to ensure transmission). Note that if a party requests higher fidelity audio, then the system knows that priorities must be changed in order for proper transmission of the audio within a predetermined time period, therefore when a request is made for higher quality

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audio, the inherently knows that the data must be given a higher priority in order to complete the transmission properly.

Referring to claim 3, Rostoker discloses compressing data in a category if a certain priority has been allocated (see Column 5, Lines 29-32).

Referring to claim 7, Rostoker discloses that data is transmitted in conjunction with a TV broadcast signal (see Column 3, Lines 39-40 for broadcast satellites that transmit video).

Referring to claim 10, see rejection of claim 8.

Referring to claim 11, see Column 5, Lines 32-35 for combining the data with a broadcast TV signal for transmission to a remote receiver.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5, and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rostoker et al. (U.S. Patent No. 56,111,863) in view of Acampora et al. (U.S. Patent No. 5,729,292).

Referring to claim 5, Rostoker discloses all the limitations in claim 8, as well as transmitted data in packets, each packet containing data of different categories (see Column 7, Lines 6-12), but fails to teach monitoring a packet to be sent and if space remains in such a packet, the space being insufficient to accommodate data allocated a

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relatively high priority, incorporating lower priority data into the space prior to transmission.

Acampora teaches dividing a packet into different packet slots, where each packet slot has a corresponding priority list (see Column 3, Lines 40-43 and Column 3, Lines 59-61), where these lists are scanned according to priority, in order to find an entry that contains sufficient data to form a packet (see Column 4, Lines 26-29). Also note Column 4, Lines 38-45 for assigning a low data rate signal (lower priority) component a high priority, therefore lower priority data can be incorporated into packet space prior to transmission.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the transmitter, as taught by Rostoker, using the packet priority allocation technique, as taught by Acampora, for the purpose of optimizing packet transport to instantaneous changes in the data rate of component source signals (see Column 2, Lines 51-54 of Acampora).

Referring to claim 12, Rostoker teaches all the limitations in claim 8, but fails to teach that the additional limitations taught by Acampora of the data of each category is stored at a different address in a store, the address of the data being stored in a pointer store in order of their priority (see Column 5, Lines 57-59), wherein the data to be transmitted is selected by obtaining the address at the location in the pointer store, corresponding to the highest priority (see Column 5, Lines 61-63).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the controller 22, as taught by Rostoker, using the

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RAM, as taught by Acampora, for the purpose of optimizing packet transport to instantaneous changes in the data rate of component source signals (see Column 2, Lines 51-54 of Acampora).

Claim 13 corresponds to claim 12, with the additional limitation of adjusting the position in the pointer store of the address of the data whose priority is changed. Acampora teaches this limitation by having the microprocessor 50 write data into the second list memory 24. Since the memory is being manipulated by a microprocessor, then an address (location in memory) is inherently being adjusted (written to).

4. Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rostoker et al. (U.S. Patent No. 56,111,863) in view of Cash et al. (U.S. Patent No. 5,481,312).

Referring to claims 6 and 9, Rostoker discloses all the limitations in claim 8, but fails to teach the additional limitations of the categories of receiver enablement/disablement data and an interactive service. Cash teaches high and low priority data being transmitted over a television network (see Column 1, Lines 52-57), where the data can be either enablement/disablement data, or an interactive service (see Column 7, Lines 27-39 for stop, play and fast forward command, which are all interactive and enable and disable the receiver from playing a movie).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the transmitted priority data, as taught by Rostoker, to include the VCR type request data, as taught by Cash, for the purpose of allowing a user to watch the requested video at his/her leisure.

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***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P Salce whose telephone number is (703) 305-1824. The examiner can normally be reached on M-Th 8am-6pm (every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on (703) 305-4380. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

September 30, 2003

*Andrew Faile*  
ANDREW FAILE  
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